



**Upper Tribunal  
(Immigration and Asylum Chamber)**

Appeal Number: PA/05322/2019 (V)

**THE IMMIGRATION ACTS**

**Heard at Field House  
On 6 October 2020**

**Decision & Reasons Promulgated  
On 15 October 2020**

**Before**

**UPPER TRIBUNAL JUDGE O'CALLAGHAN**

**Between**

**A.C.**

(ANONYMITY DIRECTION MADE)

Appellant

**and**

**THE SECRETARY OF STATE FOR THE HOME DEPARTMENT**

Respondent

**Representation:**

For the Appellant: Mr Z Khan, Solicitor, Prestige Solicitors

For the Respondent: Mr D Clarke, Senior Presenting Officer

**DECISION AND REASONS**

**Introduction**

1. The appellant is a national of India. She appeals against an adverse decision of the respondent, dated 23 May 2019, refusing her application to remain in this country on international protection grounds.
2. Her appeal against the respondent's decision was initially refused by the First-tier Tribunal (Judge of the First-tier Tribunal Holt) by means of a decision sent to the parties on 23 July 2019. The appellant was granted permission to appeal to this Tribunal by Judge of the First-tier Tribunal

Neville on 5 November 2019. Following a hearing held in Manchester Upper Tribunal Judge Pickup set aside the decision of the First-tier Tribunal by a decision dated 29 January 2020. UTJ Pickup observed, *inter alia*, at para. 23 of his decision:

'23. ... I adjourned the continuation and remaking of the appeal to the Upper Tribunal, preserving, of course, the respondent's credibility findings set out in the refusal decision, and noting that the only issues to be addressed are those of relocation and sufficiency of protection.'

3. The resumed hearing before me was a Skype for Business video conference hearing held during the Covid-19 pandemic. I was present in a hearing room at Field House. The hearing room and the building were open to the public. The hearing and its start time were listed in the daily list. I was addressed by the representatives in exactly the same way as if we were together in the hearing room. I am satisfied: that this constituted a hearing in open court; that the open justice principle has been secured; that no party has been prejudiced; and that, insofar as there has been any restriction on a right or interest, it is justified as necessary and proportionate.
4. The appellant did not attend the remote hearing. I confirmed with Mr Khan that the appellant's non-attendance raised no adverse concerns. The hearing was listed for submissions alone and the appellant was entitled to rely upon her legal representative to advance her case before this Tribunal. No member of the public attended the hearing, either remotely or in person at Field House.
5. The representatives confirmed that they and the Tribunal were in possession of all relevant documents. On the morning of the hearing Mr. Clarke filed and served the following documents: CPIN 'India: Religious minorities' version 2.0 (May 2018), CPIN 'India: Women fearing gender-based violence' version 2.0 (July 2018), CPIN 'India: Actors of protection' version 1.0 (January 2019), CPIN 'India: Internal relocation' version 1.0 (January 2019) and Country Background Note: India version 1.0 (January 2019). He further served three decisions of this Tribunal: BK (Risk - adultery - PSG) India CG [2002] UKIAT 03387, MD (same-sex orientated males: risk) India CG [2014] UKUT 00065 (IAC) and AR and NH (lesbians) India CG [2016] 00066 (IAC). Mr. Khan was given time to consider the documents and confirmed that he was ready to proceed before the hearing commenced.
6. Save for one or two very short periods where the connection to Mr Khan suffered buffering, the representatives and the Tribunal were able to see and hear each other throughout. On occasions where Mr Khan suffered buffering, the hearing stopped and upon Mr Khan's connection resuming the representatives returned to the point of their submissions reached before the problems with the link arose. Both representatives expressed satisfaction with the hearing at its conclusion.

## **Anonymity**

7. An anonymity direction has previously been made in this matter and neither party requested that it be set aside. This is a matter concerning an application for international protection and I am mindful of Guidance Note 2013 No 1 which is concerned with anonymity directions and confirms that the starting point for consideration of such directions in this chamber of the Upper Tribunal, as in all courts and tribunals, is open justice. However, I observe paragraph 13 of the Guidance Note where it is confirmed that it is the present practise of both the First-tier Tribunal and this Tribunal that an anonymity direction is made in all appeals raising asylum or other international protection claims. I am therefore satisfied that it is appropriate for the anonymity direction to continue in this matter, to avoid the likelihood of serious harm arising to the appellant from the contents of her protection claim becoming known to the wider public.
8. The direction is detailed at the conclusion of this decision.

## **Background**

9. The appellant is presently aged 33 and hails from the State of Gujarat, situated on the west coast of India. She was awarded a Master's degree in commerce. Prior to her travel to the United Kingdom she was employed as a teacher from 2015.
10. She met her husband, MKS, at college in 2011 and a friendship developed. At that date she was Hindu and MKS was Muslim. In January 2015, when aged 27, she informed her family that she wished to be engaged to MKS. Her family expressed their disapproval of events.
11. The appellant converted to Islam and married MKS at a mosque in December 2015.
12. Two or three weeks later, under pressure from her family, the appellant was engaged to another man, H, who is Hindu.
13. The appellant was granted entry clearance as a visitor and travelled to the United Kingdom in May 2016. On 8 August 2016 she spoke to her mother and was informed that members of Shiv Sena, a Hindu nationalist political party, had killed MKS by dousing him in petrol and burning him alive. They also burnt down his home. She understands that her sister found out about her marriage to MSK, having located a photo on the appellant's lap-top computer, and the information was relayed to Shiv Sena who then took adverse action against her husband. The appellant's mother informed her that members of Shiv Sena were also looking for her. The appellant is

further aware that the whole of her neighbourhood has been informed as to her having converted and married a Muslim.

14. The appellant sought international protection asserting a fear of persecution at the hands of Shiv Sena, her family and her deceased husband's family.
15. The respondent initially interviewed the appellant on 4 November 2016 and conducted a substantive interview on 17 May 2017. In her interview the appellant identified her family members as either living in her home city or in a neighbouring city some 40 kms to the south. I note at this juncture that no family member is said to reside in Delhi.
16. At Q31 of the interview, the appellant records her mother informing her during the phone call in August 2016:

'31. It's better not to have a daughter than to have a daughter like you. You are dead as far as we are concerned and Shiv Sena are also looking for you.'

17. The appellant expressed her inability to approach the police in her interview:

*'211. Can you tell me why you could not approach the police in IND if you were to have problems on your return?'*

Because my family consider me as dead. Shiv Sena will not let me, they are very strong. There is nobody even if I go back to IND, nobody will accept me, if I go Shiv Sena will kill me.

*212 How do you know the police will not protect you?*

Because, I have heard Shiv Sena are very strong, powerful

*213. Could you live elsewhere in IND such as Delhi, away from the people you fear?*

Shiv Sena would find me somehow and they will kill me because I'm very scared and they will kill me because I'm very scared, they will not leave me alone and I love my life.

*214. How will the people you fear find out you have returned to IND?*

Shiv Sena and my family are bound to find out

*215 How?*

Because Shiv Sena are so widespread there, they are bound to find out and I don't have anybody there and I'm scared'

18. The respondent refused the applicant's claim for international protection by means of a decision letter dated 23 May 2019. The respondent accepted the appellant as being credible as to her personal history:

32. Therefore, due to the consistencies of your oral account, it is accepted that you married without your family's consent and converted to Islam.

...

36. In light of the consistencies of your oral account, and to the low burden of proof required, it is therefore accepted that your family found out about your marriage and your husband was killed by the Shiv Sena.

19. The respondent further accepted at para. 41 of her decision that the appellant had demonstrated a genuine subjective fear on return to India. However, it was considered that such genuine subjective fear was not well-founded because there is sufficient protection provided by the India authorities, as detailed at paras. 49 to 66 of the decision. The respondent further concluded that the appellant could internally relocate within India, at paras. 67 to 85.

20. Such reasoning was underpinned by the respondent's conclusion that the appellant was not at risk upon return to India consequent to her being a single female. Reliance was placed upon *BK (Risk - Adultery - PSG) India CG* [2002] UKIAT 00387. The respondent observed at paras 46 to 47:

46. Consideration was paid to if you will struggle to get a job in India, away from your local area. As will be seen below, the Home Office consider that you will be safe from any threats you may have from your family, your husband's family and the Shiv Sena, if you are to move away from their local area. It is considered that you are capable of internally relocating away from your local area and expecting you to do so would not amount to being 'unduly harsh'. It is noted that you are a highly educated and have previously worked in India as a teacher. You are a woman of considerable fortitude who managed to make a living in the UK, a totally foreign country, under trying circumstances.

47. It is considered not unduly harsh to expect you to employ the same skills and do as you have previously undertaken in India, in finding employment and re-establishing yourself there. Should you face any issues in India as a single woman, it is considered that you could rely on the domestic protection from Indian authorities and also rely on civil society and human rights organisations that operate in India (see under sufficiency of protection). For these reasons it is not accepted that there is a reasonable likelihood of you receiving treatment amounting to persecution, as a single female returnee, on return to India.'

## **Decision**

21. The parties agreed before me that the two issues outstanding for consideration were sufficiency of protection and internal relocation. On behalf of the respondent Mr Clarke advanced his case on the ground that the appellant could be returned to and reside in Delhi.
22. During his thoughtful and concise submissions Mr. Khan accepted that he could not advance three potential arguments. Firstly, Mr. Khan confirmed that he had intended to submit that the appellant could be traced by political extremists through her registration with India's biometric ID system called Aadhar which provides an identity number that can be obtained voluntarily by residents or passport holders of India, based on their biometric and demographic data. However, consequent to Mr. Clarke's submissions on this point, namely that the appellant had provided no evidence to date as to whether she had actually previously registered, or alternatively, that she would register upon return, Mr Khan accepted that he had insufficient instructions to advance this submission.
23. Secondly, whilst acknowledging that the appellant had converted to Islam so as to marry her husband, Mr Khan accepted that the appellant had provided no evidence by means of her witness statement as to whether she continued to practise her religion in this country and further he had no instructions on this point. He therefore did not seek to rely upon the appellant possessing a well-founded fear of persecution upon her return to India through the active practice of her Islamic faith.
24. Mr. Khan also accepted that whilst the appellant relied upon a letter from Newham University Hospital, dated 29 April 2017, that briefly refers to her suffering from bipolar disorder, there is no additional evidence before the Tribunal as to the nature of her disorder or her present treatment. The only evidence as to medication concerns the use of Phenergan, an antihistamine, and Ferrous Fumarate for the treatment of iron deficiency anaemia. Consequently, Mr. Khan considered that he was not capable of advancing a case on the ground of mental health.
25. Paragraph 3390 of the Immigration Rules confirms that the respondent is not required to grant refugee status to an applicant seeking international protection if in part of the country of origin they would not have a well-founded fear of being persecuted, and they can reasonably be expected to stay in that part of the country. As confirmed by Lord Hope in Januzi v. Secretary of State for the Home Department [2006] UKHL 5, [2006] 2 A.C. 426, at [47], the question where the issue of internal relocation is raised is whether it would be unduly harsh to expect an appellant who is being persecuted for a Convention reason in one part of her country to move to a less hostile part before seeking refugee status abroad. The words 'unduly harsh' set the standard that must be met for this to be regarded as unreasonable. If the appellant can lead a relatively normal life there judged by the standards that prevail in her country of nationality generally it will not be unreasonable to expect her to move there.

26. In this matter Mr. Khan primarily relies upon the reach of Shiv Sena and did not advance with any vigour the possibility of the appellant's family, or her husband's family, tracking her down to a home outside of the State of Gujarat. He was correct to do so as the appellant does not state by her witness statement that either family have any ability through their own means to track her down elsewhere in India. I observe the Country Guidance decision in *MD (Same-sex orientated males: risk) India CG* [2014] UKUT 00065 (IAC), at [154], where the Tribunal confirmed:

'There is very little evidence before us of families successfully using the police in an attempt to track down those family members who have fled, with a view to those persons being 'repatriated' back to the family.'

27. I observe that the appellant relies upon no objective evidence, let alone cogent evidence, that is capable of establishing very strong grounds for not following a Country Guidance decision in this matter: *R (SG (Iraq)) v. Secretary of State for the Home Department* [2012] EWCA Civ 940, [2013] 1 W.L.R. 41.

28. Rather she details her primary fear in her witness statement as being that members of Shiv Sena will wish to make an example of her. The appellant provides little, if any, objective evidence as to the capabilities of Shiv Sena to target her, relying in the main upon her fears as expressed in her witness statement. Shiv Sena are a Hindu nationalist political party primarily located within the state of Maharashtra. Mr. Khan relied upon Shiv Sena having aligned itself with the ruling Bharatiya Janata Party ('BJP') and being in national coalition as establishing a means by which the appellant could be tracked down elsewhere in India. However, I am aware that though Shiv Sena was a coalition partner in the National Democratic Alliance from 1998 it withdrew from the coalition in 2019 following the Maharashtra elections in October when it claimed that the BJP has failed to keep promises. At the present time Shiv Sena is in alliance with the Congress Party and Nationalist Congress Party in Maharashtra. To facilitate the alliance, Shiv Sena has been forced, outwardly, to revisit its earlier position of Hindustan for Hindus and subscribe to the idea of composite nationalism that its new alliance partners follow. In such circumstances, the party does not have its hand on levers of power outside of Maharashtra and when applying the requisite standard of proof, the appellant cannot establish that members of Shiv Sena could locate her in Delhi by using information available to the national and local authorities.

29. The respondent contends that the appellant can reasonably relocate to Delhi. Whilst there are, in general, poor societal attitudes to interfaith marriage, the situation on the ground varies depending upon class and region. At para. 9.3.1 of the CPIN concerned with religious minorities it is observed that there is less discrimination within a middle-class urban context and that in urban areas it is not uncommon for inter-religious marriages to take place. Consequently, observing that the appellant is a

qualified teacher and has a history of employment in the teaching profession, I am satisfied that upon her return to Delhi she can secure employment as a teacher and resume a middle-class urban life where her history of having married a Muslim would not cause her adverse consequences. As for her conversion, and I proceed for the purpose of this appeal on the basis that such conversion is ongoing though the appellant's evidence is largely silent on this point, I observe that such act was illegal in Gujarat which adopted an anti-conversion law in 2003. However, there is no such legal ban in force in Delhi and so the appellant would not be subject to adverse legal measures consequent to her conversion upon relocation to Delhi.

30. The CPIN concerned with internal relocation confirms that Indian law provides for freedom of movement and grants citizens the right to reside and settle in any part of the territory of India. I observe that upon her return the appellant may be required to register if she wished to access government services and accommodation. As a single woman she would be required to provide the name either of her husband or father upon registering. As Mr Clarke observed there is no evidence before me that the appellant cannot simply name her husband and confirm that she is a widow if she were to seek to register. Having given careful consideration to this matter there is simply insufficient evidence before me to identify that the appellant will suffer adverse consequences upon registering for such services so as to make internal relocation unduly harsh. I observe that Mr Khan did not rely upon this issue in his submissions.
31. In such circumstances I am satisfied that it would not be unduly harsh for the appellant to relocate to Delhi. I observe at this juncture that such conclusion may possibly have differed if the appellant had established to the appropriate standard that mental health concerns would impact upon the reasonableness of internal relocation. However, as observed above Mr Khan accepted that on the very limited medical evidence presently before this Tribunal, he was unable to advance such argument on behalf of the appellant
32. In Horvath v. Secretary of State for the Home Department [2001] 1 A.C. 489 the House of Lords confirmed that the sufficiency of state protection is not measured by the existence of a real risk of an abuse of rights but by the availability for the protection of a citizen and a reasonable willingness of the state to operate it. This is a practical standard. I am satisfied that the Indian authorities are both willing and able to provide through the police and its legal system a reasonable level of protection from non-state agent persecution upon the appellant relocating to Delhi. Whilst the police services have problems of being overworked and underpaid, they continue to investigate and prosecute criminal cases. There is no cogent evidence before this Tribunal that the police authorities in Delhi would not take steps to protect the appellant if problems were to arise because of her interfaith marriage, her conversion or her experiences in relation to supporters of Shiv Sena.



33. In all the circumstances the appellant can reasonably exercise internal relocation within India and upon doing so will enjoy sufficient protection at the hands of the Indian State. Consequently, her appeal on international protection grounds must be dismissed.
34. The appellant advanced a human rights appeal relying upon articles 2, 3 and 8 by means of her grounds of appeal filed with the First-tier Tribunal in June 2019. However, as observed by UTJ Pickup at para. 2 of his decision, no submissions on those grounds were advanced before the First-tier Tribunal and no appeal was filed to the Upper Tribunal relying upon human rights grounds. I further observe that Mr Khan made no express submissions on human rights issues. I am satisfied that UTJ Pickup only set aside the decision concerning international protection as this was the only element of the appellant's appeal that was advanced before the Upper Tribunal and in such circumstances there is no human rights appeal before. In any event, an article 3 appeal would stand and fall with the international protection appeal and the appellant does not assert that she enjoys a family or private life capable of establishing article 8 obligations either under or outside the Immigration Rules. There is no evidence before me capable of establishing that she enjoys a private or family life for the purposes of article 8, let alone that her removal would disproportionately interfere with the exercise of such rights.

### **Notice of Decision**

35. By means of a decision sent to the parties on 29 January 2020 this Tribunal set aside the Judge's decision promulgated on 21 March 2019 pursuant to section 12(2)(a) of the Tribunal, Courts and Enforcement Act 2007.
36. The decision is re-made, and the appellant's appeal on international protection grounds is dismissed.

### **Direction Regarding Anonymity - Rule 14 of the Tribunal Procedure (Upper Tribunal) Rules 2008**

37. Unless the Upper Tribunal or a court directs otherwise no report of these proceedings or any form of publication thereof shall directly or indirectly identify the appellant. This direction applies to, amongst others, the appellant and the respondent. Any failure to comply with this direction could give rise to contempt of court proceedings.

Signed: D. O'Callaghan  
**Upper Tribunal Judge O'Callaghan**  
Date: 7 October 2020

**TO THE RESPONDENT**  
**FEE AWARD**

The appellant did not pay a fee, and the appeal has been dismissed. No fee award if made.

Signed: D. O'Callaghan  
**Upper Tribunal Judge O'Callaghan**  
Date: 7 October 2020